

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

SARA BROWN PLAINTIFF

VS. 1:95CV327-D-D

INTER-CITY FEDERAL BANK FOR SAVINGS DEFENDANT

CONSOLIDATED WITH

SARA BROWN PLAINTIFF

VS. 1:95CV361-D-D

INTER-CITY FEDERAL BANK FOR SAVINGS DEFENDANT

MEMORANDUM OPINION

This cause comes before the court upon the motion of the plaintiff, Sara Brown, to remand the action styled Sara Brown v. Inter-City Federal Bank for Savings, 1:95cv361-D-D, to the Circuit Court for Winston County, Mississippi. Ms. Brown brought suit in federal court alleging that the defendant, Inter-City Federal Bank for Savings ("Inter-City"), violated Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Equal Pay Act. She simultaneously filed an action against Inter-City in the Circuit Court of Winston County, Mississippi claiming that Inter-City violated its equal employment opportunity policy, deliberately and intentionally inflicted emotional distress and breached its duty of good faith and fair dealing. Within thirty (30) days of the filing of the state court action, Inter-City entered a Notice of Removal pursuant to 28 U.S.C. § 1441(a) and (b), and the cases were subsequently consolidated. This motion for remand followed.

DISCUSSION

I. GENERAL PRINCIPLES

The burden is on the defendant to prove federal jurisdiction exists over the state court suit. Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F.3d 362, 365 (5th Cir. 1995) (citing Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 42 S. Ct. 35, 66 L.Ed. 144 (1921)). Due to the significant

federalism concerns removal raises, courts should strictly construe the removal statute. Carpenter, 44 F.3d at 365-66 (citing Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 809, 106 S. Ct. 3229, 3233, 92 L.Ed.2d 650 (1986); Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 107, 61 S. Ct. 868, 872, 85 L.Ed.2d 1214 (1941)). Further, all doubts must be resolved in favor of remand. Dodson v. Spiliada Maritime Corp., 951 F.2d 40, 42 (5th Cir. 1992); Butler v. Polk, 592 F.2d 1293, 1296 (5th Cir. 1979).

Actions may be removed to the appropriate district court where the court would have had original jurisdiction had it first been filed there instead of state court. 28 U.S.C. § 1441(a); Caterpillar v. Williams, 482 U.S. 386, 391-92, 107 S. Ct. 2425, 2429, 96 L.Ed.2d 318 (1987); Merkel v. Federal Express Corp., 886 F. Supp. 561, 564 (N.D. Miss. 1995). "Subject matter jurisdiction may not be waived, and the district court 'shall dismiss the action' whenever 'it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter.'" Avitts v. Amoco Prod. Co., 53 F.3d 690, 693 (5th Cir. 1995) (quoting Fed.R.Civ.P. 12(h)(3)). In that diversity of the parties has not been presented as the basis for this court's jurisdiction, Ms. Brown's state court claims must "aris[e] under the Constitution, treaties or laws of the United States," more familiarly known as jurisdiction based on a federal question, in order to be removable. 28 U.S.C. §§ 1441(b), 1331; Carpenter, 44 F.3d at 366.

Generally, to determine whether a cause of action presents a federal question, the court looks to the allegations contained in the plaintiff's "well-pleaded complaint." Carpenter, 44 F.3d at 366. If the face of the complaint reveals "some substantial, disputed question of federal law," then the suit is said to arise under federal law. Id. (citing Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 12, 103 S. Ct. 2841, 2848, 77 L.Ed.2d 420 (1983)). If no issue of federal law appears on the face of the complaint, then there is no federal question jurisdiction. Merkel, 886 F. Supp. at 564 (citing Caterpillar, 482 U.S. at 392, 107 S. Ct. 2429). Without relying on his petition for removal, his pleadings, an anticipated or inevitable federal defense, the defendant "must show that a federal right is 'an element, and an essential one, of the plaintiff's cause of action.'" Carpenter, 44

F.3d at 366 (quoting Gully v. First Nat'l Bank, 299 U.S. 109, 111, 57 S. Ct. 96, 97, 81 L.Ed.2d 70 (1936)). Thus, the plaintiff is said to be the master of her complaint. See Healy v. Sea Gull Specialty Co., 237 U.S. 479, 480, 35 S. Ct. 658, 659, 59 L.Ed. 1056 (1915); The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 23, 33 S. Ct. 410, 411, 57 L.Ed. 716 (1913); Willy v. Coastal Corp., 855 F.2d 1160, 1167 (5th Cir. 1988).

A plaintiff with a choice between federal- and state-law claims may elect to proceed in state court on the exclusive basis of state law, thus defeating the defendant's opportunity to remove, but taking the risk that his federal claims will one day be precluded.

Carpenter, 44 F.3d at 366 (citing cases).

II. APPLICATION

The court is of the opinion that the face of Ms. Brown's complaint states a federal cause of action.

During the latter years of her employment as a loan officer, Plaintiff was continuously harassed by the President of the bank, Terry Lee Woods, a thirty-four (34) year old male. Woods desired to be rid of Plaintiff. For the purpose of making Plaintiff's life difficult, Woods engaged in unending patterns of harassment directed toward the Plaintiff. *The harassment was apparently based upon Plaintiff's sex, and possibly, also upon her age.*

....

Defendant violated the above Equal Employment Opportunity policies, since it discriminated against Plaintiff and her employment, *by discriminating against her in regard to her age, and sex.*

Plaintiff's Complaint, Exh. A att. Plaintiff's Motion to Remand (emphasis added). In that Title VII and the Age Discrimination in Employment Act are clearly implicated on the face of plaintiff's complaint, remand to state court is inappropriate and the plaintiff's motion shall be denied.¹

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of June, 1996.

¹The court emphasizes that it does not address the defendant's argument that the plaintiff's handbook claim necessarily entails resolution of factual questions under federal law. The court merely holds that the facts alleged in the plaintiff's complaint state a federal cause of action for discrimination under Title VII and the ADEA, thus justifying removal, irrespective of plaintiff's handbook claim.

United States District Judge

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ORDER DENYING MOTION TO REMAND

Pursuant to a memorandum opinion issued this day, the court upon due consideration of the submissions by the parties finds the plaintiff's Motion to Remand not well taken and the same shall be denied.

Therefore it is ORDERED that:

1) Sara Brown's Motion to Remand the cause of action styled *Sara Brown v. Inter-City Federal Bank for Savings*, 1:95cv361-D-D, to the Circuit Court for Winston County, Mississippi is hereby DENIED.

2) Plaintiff's Motion to Stay Proceedings on Plaintiff's Motion to Remand is DENIED AS MOOT.

3) In that Plaintiff's only expressed reason for filing her motion to amend her complaint was to make plain her intent not to state a federal claim, Plaintiff's Motion to File Amended Complaint is hereby DENIED.

SO ORDERED this ____ day of June, 1996.

United States District Judge